Supreme Court, U. S.
FILED
MAY 3 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

74-
No. 730

JOHN C. ROEMER, III, EDWARD E. DOERR, KENNETH A. STEVENS, and CYNTHIA KOONCE MILLER,

Appellants,

—v.—

BOARD OF PUBLIC WORKS OF THE STATE OF MARYLAND; MARVIN MANDEL, Governor; LOUIS L. GOLDSTEIN, Comptroller; JOHN A. LUETKEMEYER, Treasurer; COLLEGE OF NOTRE DAME OF MARYLAND, INC.; MOUNT SAINT MARY'S COLLEGE; SAINT JOSEPH COLLEGE AT EMMITSBURG, MARYLAND, INC.; and THE ASSOCIATED PROFESSORS OF LOYOLA COLLEGE IN THE CITY OF BALTIMORE, INC.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

APPENDIX

JURISDICTIONAL STATEMENT FILED DECEMBER 11, 1974
PROBABLE JURISDICTION NOTED FEBRUARY 18, 1975

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/2 Printed in Appendix to Jurisdictional Statement, beginning at page A-57.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JOHN C. ROEMER, III, EDWARD E. DOERR, KENNETH A. STEVENS, and CYNTHIA KOONCE MILLER,	*	
v.	*	
BOARD OF PUBLIC WORKS OF THE STATE OF MARYLAND, MARVIN MANDEL, Governor, LOUIS L. GOLDSTEIN, Comptroller, JOHN A. LUETKEMEYER, Treasurer, WESTERN MARYLAND COLLEGE, a Maryland corporation, COLLEGE OF NOTRE DAME OF MARYLAND, INC., a Maryland corporation, MOUNT SAINT MARY'S COLLEGE, a Maryland corporation, SAINT JOSEPH COLLEGE AT EMMITSBURG, MARYLAND, INC., a Maryland corporation, and THE ASSOCIATED PROFESSORS OF LOYOLA COLLEGE IN THE CITY OF BALTIMORE, INC., a Maryland corporation	*	CIVIL NO. 72-307-Y (Attorneys omitted in printing)

* * * * * * * *

RELEVANT DOCKET ENTRIES

March 27, 1972
(1) Complaint and exhibit 1, filed.

June 1, 1972
(11) Answer of Defendant, The Associated Professors of Loyola College in the City of Baltimore, Inc., filed.

June 1, 1972
(13) Answer of Defendant Mount St. Mary's College, filed.

December 13, 1972
(32) Memorandum Opinion and Order (Young, J.) "dismissing" that part of complaint which alleges a free exercise violation; "dismissing" complaint as to Plaintiffs American Civil Liberties Union of Maryland and Protestants and Other Americans United for Separation of Church and State; and "denying" motions of Defendants to dismiss for failure to join persons needed for just adjudication, filed. (copies mailed 12/13/72)

December 14, 1972
(33) Judgment entered in favor of Defendants against Plaintiffs American Civil Liberties Union of Maryland and Protestants and Other Americans United for Separation of Church and State, a/k/a Americans United For Separation of Church and State, for costs, Order (Clerk), filed. (copies

mailed 12/14/72)

January 2, 1973
(37) Answer of Defendant Western Maryland College, filed.

January 4, 1973
(38) Answer of defendant, College of Notre Dame of Maryland, Inc., filed.

January 4, 1973
(40) Answer of defendants, Board of Public Works of the State of Maryland, Marvin Mandel, Governor, Lewis L. Goldstein, Comptroller and John A. Leutkemeyer, Treasurer of the State of Maryland, filed.

January 10, 1973
(42) Answer of Defendant Saint Joseph College of Emmitsburg, Md., Inc., filed.

July 12, 1973
(122) Transcript of proceedings before Young, J. on May 29, 30, 31, June 4, 5, 11, 12, 18, 19, 22, 25 and 26, 1973 (12 volumes) (Filed separately)

December 14, 1973
(145) Motion of plaintiffs for preliminary injunction as to defendant Board of Public Works of the State of Maryland, affidavit, attachment, and memo in support thereof. (Cys. sent to Judge)

January 31, 1974
(155a) Order (Young, J.) "Denying" motion of plaintiffs for preliminary injunction as to Board of Public Works of State of Maryland. (Cys. mailed 2/21/74)

October 16, 1974
(163) Memorandum Opinion and Order (Young, J., and Watkins, J.) 1) That Md. Ann. Code art. 77A, Sec. 65 et seq. is constitutional on its face and as applied; 2) That Plaintiffs' Motion for injunction of the application of Article 77A, Sec. 65 et seq. be, and the same is, hereby DENIED: and 3) That Plaintiff's Motion for refund of aid program be, and the same is, hereby DENIED: Dissent by Bryan, Circuit Judge (unsigned), and copy of Findings of Fact filed January 18, 1974. (Cys. mailed 10/16/74)

October 21, 1974
(164) JUDGMENT: 1) That Md. Ann. Code art. 77A, Sec. 65 et seq. is constitutional on its face and as applied; 2) That Plaintiff's motion for injunction of the application of Article 77A, Sec. 65 et seq. be, and the same, is hereby DENIED: and 3) That Plaintiff's motion for refund of aid program be, and the same is, hereby DENIED, Order (Clerk), with Approval of Court (Watkins, J.) thereon. (Cys. mailed 10/22/74)

October 25, 1974
(165) Notice of Appeal of Plaintiffs to the Supreme Court of the United States.

October 25, 1974
(166) Motion of Plaintiffs for injunction pending appeal, statement of points and authorities in support thereof, and request for hearing. (Copies mailed to three Judges - per Greenwald)

November 15, 1974
(173) Order (Watkins, J., and Young, J.) "DENYING" Motion of plaintiffs for Injunction pending Appeal; Bryan, Cir. J., concurring. (Cys. mailed 11/15/74)

November 27, 1974
(174) Request of Plaintiffs to certify and transmit record, as set forth.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

(title omitted in printing)

* * * * *

COMPLAINT

1. This is a civil action by the individual plaintiffs on their own behalf and on behalf of all others similarly situated and by the organizational plaintiffs for a preliminary and permanent injunction against the apportionment and payment of funds of the State of Maryland to sectarian, educational institutions which are engaged in the teaching and practice of religion and a substantial purpose or activity of which is the inculcation of religious values and against the use of such funds by such institutions. This is also an action for a declaratory judgment that the law of the State of Maryland known as "Aid to Non-Public Institutions of Higher Education", Maryland Code, Article 77A, §§65-69, hereinafter sometimes called "the Act", is unconstitutional in that it violates the first and fourteenth amendments of the United State Constitution and that any funds paid under the Act to such sectarian, educational institutions are required to be returned to the State of Maryland.

2. Jurisdiction is conferred upon this court by 28 U.S.C. §§1331, 1343, 2281, and 2284.

3. This action raises important federal questions under the United States Constitution, and the amount in controversy exceeds $10,000.00, exclusive of interest and costs.

4. The American Civil Liberties Union of Maryland and Americans United for Separation of Church and State share as common objectives the preservation of the doctrine of separation of church and state and opposition to the use of public funds for the support of sectarian, educational institutions.

5. The individual plaintiffs are all citizens of the United States and citizens and taxpayers of the State of Maryland.

6. The defendant Marvin Mandel is the governor of Maryland. The defendant Louis L. Goldstein is the comptroller of Maryland. The defendant John A. Luetkemeyer is the treasurer of Maryland. Said defendants constitute and are sued herein as the defendant Board of Public Works of the State of Maryland.

7. Each of the institutional defendants is a sectarian, educational institution which is engaged in

the teaching and practice of religion and a substantial purpose of which is the inculcation of religious values. Each of the institutional defendants is controlled in whole or in part by a particular church. Each of the institutional defendants compels obedience to the doctrines and dogmas of a particular religion, requires instruction in theology and doctrine, and does everything it can to propagate a particular religion.

8. On May 24, 1971, the governor of Maryland signed into law the Act titled "Aid to Non-Public Institutions of Higher Education", Maryland Code, Article 77A, §§65-69 (originally designated §§64-68). The Act purports to authorize the defendant Board of Public Works to apportion for each fiscal year commencing with July 1, 1971, and to pay any private institution of higher education with the State of Maryland which meets designated requirements, upon application by such institution, such amounts of state aid as are authorized by the Act. The full text of the Act is set forth in Exhibit 1 attached hereto. On information and belief, plaintiffs allege that the funds from which such state aid is derived are general tax revenues of the State of Maryland, including taxes paid by the individual plaintiffs and others similarly situated.

9. On information and belief the institutional defendants have received payments from the defendant Board of Public Works pursuant to the Act, as follows: Western Maryland College -- $90,500; The Associated Professors of Loyola College in the City of Baltimore, Inc. -- $157,000; College of Notre Dame, Inc. -- $90,000; Mount Saint Mary's College -- $117,500; Saint Joseph College at Emmitsburg, Maryland, Inc. -- $65,000.

10. The Act on its face and as applied by the defendant Board of Public Works is a law respecting an establishment of religion and prohibiting the free exercise thereof in violation of the first amendment to the United States Constitution, as made applicable to the states by the fourteenth amendment.

11. This action involves a genuine case or controversy between the plaintiffs and the defendants.

12. The class represented by the individual plaintiffs is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims or defenses of the class; and the representative parties will fairly and adequately protect the interests of the class.

13. The plaintiffs have no adequate remedy at law, and will suffer irreparable damage unless a preliminary and permanent injunction are granted.

Wherefore, the plaintiffs pray that the following relief be granted:

a. That the Act be declared unconstitutional on its face and as applied.

b. That the defendants Board of Public Works, Marvin Mandel, governor, Louis L. Goldstein, comptroller, and John A. Luetkemeyer, treasurer, be enjoined during the pendency of this action and permanently from apportioning and paying state aid pursuant to the Act to the institutional defendants.

c. That the institutional defendants be enjoined during the pendency of this action and permanently from using any funds received pursuant to the Act.

d. That a declaration be issued stating that all funds received by the institutional defendants pursuant to the Act, together with interest earned, are required to be returned to the defendant Board of Public Works.

e. Judgment for costs in favor of the plaintiffs.

f. Such other and further relief as the court may deem just and proper.

/s/

EXHIBIT 1

MARYLAND CODE,
ARTICLE 77A, §§65-69

AID TO NONPUBLIC
INSTITUTIONS OF
HIGHER EDUCATION

§65. Board of Public Works authorized to make payments.

The Board of Public Works is authorized to apportion for each fiscal year, commencing with July 1, 1971, and to pay to any private institution of higher education within the State of Maryland which meets the requirements set forth in §66 of this subtitle, upon application by the institution, such amounts of State aid as are authorized to be paid by §67 of this subtitle. (1971, ch. 626).

§66. Qualifications for aid.

In order to qualify for State aid apportionments pursuant to this subtitle, any institution of higher education must meet each of the following requirements:

(a) The institution must be a nonprofit private college or university which has been accredited by the State Department of Education; and which are members of or in recognized candidacy with the Middle States Association

of Colleges and Secondary Schools;

(b) The institution must have been established in this State prior to July 1, 1970;

(c) The institution must maintain one or more earned degree programs, culminating in an associate of arts or baccalaureate degree;

(d) The institution cannot be one awarding only seminarian or theological degrees. (1971, ch. 626.)

§67. Computation of amount.

The amount of the annual apportionment to each institution meeting the requirements of §§66 of this subtitle shall be computed by multiplying by two hundred dollars the number of earned associate of arts degrees, and by five hundred dollars the number of earned bachelor's degrees, conferred in this State by such institution during the fiscal year next preceding the fiscal year for which such apportionment is made. There shall be excluded from any such computation the number of seminarian or theological degrees conferred by the institution or any degree which is awarded in substitution of a previously earned degree. (1971, ch. 626.)

§68. Administration of program.

The Board of Public Works is authorized to adopt criteria and procedures, not inconsistent with this subtitle, for the implementation and administration of the aid program provided for by this subtitle, including but not limited to criteria and procedures for the submission of applications for aid under this subtitle, for the verification of degrees conferred by the applicant private institutions of higher education, for the submission of reports or data by such institutions, and for the method and times during the fiscal year for paying the aid provided for by this subtitle. (1971, ch. 626.)

§69. Severability.

If any parts of this subtitle, or any particular payments or payments to any particular types of institutions pursuant to this subtitle, shall be held to be unconstitutional or invalid for any reason, such unconstitutionality or invalidity shall not affect the remaining parts of this subtitle, and shall not affect any other payments or payments to any other types of institutions pursuant to this subtitle, the General Assembly hereby declaring that it would have enacted the remaining parts of this subtitle or would have authorized the remaining payments or payments to remaining types of institutions, if such unconstitutionality or invalidity had been known; and to this end, all parts, sections, and parts of sections

of this subtitle, and all administrative actions pursuant to this subtitle, are declared to be severable. (1971, ch. 626.)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

(title omitted in printing)

* * * * *

MOTION FOR
PRELIMINARY INJUNCTION

Plaintiffs move the court for a preliminary injunction enjoining the defendant Board of Public Works of the State of Maryland from paying any funds pursuant to Maryland Code, Article 77A, §§65-69 to the defendants The Associated Professors of Loyola College in the City of Baltimore, Inc., and Western Maryland College.

Unless restrained by this court, the defendant Board of Public Works intends to pay amounts to the aforesaid defendants based upon graduate degrees awarded by said institutions, retaining in escrow amounts based upon undergraduate degrees. Such payment will result in irreparable injury to the plaintiffs by depriving them of rights guaranteed by the First and Fourteenth Amendments against state action predicated upon a law respecting the establishment of religion.

An affidavit and memorandum in support of this motion are attached.

Plaintiffs believe that 28 U.S.C. §2281 requires that a three-judge panel determine this motion.

/s/

(Supporting affidavit and memorandum and certificate of service omitted in printing)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

(title omitted in printing)

* * * * *

ORDER

Having considered the Plaintiffs' Motion for Preliminary Injunction and the replies thereto, and after hearing the parties in open court, and it appearing that the Court lacks jurisdiction of the subject-matter of said Motion, it is this 31st day of January, 1974

ORDERED that the Motion for Preliminary Injunction be and the same is hereby DENIED.

/s/
United States District Judge